

United States Department of Agriculture



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April 19, 2005

MINNESOTA BULLETIN NO. 440-5-1

SUBJECT: PGM – Conservation Compliance, Joint Guidance on Wetland Determinations

Purpose. To provide initial information of the revised procedures concerning Food Security Act wetland determinations and the Clean Waters Act.

Expiration Date. September 30, 2005

On January 6, 1994, the Departments of Agriculture (USDA), the Interior, the Army, and the Environmental Protection Agency entered into a Memorandum of Agreement (MOA), concerning the delineation of wetlands for the purposes of Section 404 of the Clean Water Act (CWA) and Subtitle C of the Food Security Act (FSA). The MOA was developed to streamline the wetland delineation process on agricultural lands, to promote consistency between CWA and FSA, and to provide predictability and simplification for USDA program participants. In January 2005, the Department of the Army and the Department of Agriculture withdrew from the MOA.

The following web link, <http://www.nrcs.usda.gov/programs/compliance/index.html> provides the revised joint guidance agreed to by both NRCS and the Army Corps of Engineers (COE). This joint guidance reaffirms our commitment to ensuring that Federal wetlands programs are administered in a manner that minimizes the impacts on affected landowners consistent with the important goal of protecting wetlands. We will continue to strive to minimize duplication between the FSA Wetland Conservation Provisions, which are referred to as 'Swampbuster,' and the CWA Section 404 Program, while recognizing the inherent differences in the purpose and statutory language of those laws.

Because of the differences now existing between CWA and FSA on the jurisdictional status of certain wetlands (e.g., prior converted or isolated wetlands may be regulated by one agency but not the other), it is frequently impossible for one lead agency to make determinations that are valid for the administration of both laws. The guidance available via the web link will apply to cases where sufficient overlap exists to enable the wetland delineation made by one agency to be accepted for determining the jurisdiction of the other.

Direct questions on this revised policy to your Area Wetland Specialist.

WILLIAM HUNT
State Conservationist

DIST: ASTC (FO)
Area Wetland Specialists
FO
Sid Cornelius, Biologist, St. Paul, MN